No. 17-965

In The
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, ET AL.,

Petitioners,

v.

HAWAII, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF AMICUS CURIAE BY THE ZIONIST ORGANIZATION OF AMERICA (ZOA) IN SUPPORT OF PETITIONERS DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. THE PROCLAMATION IS NOT A "MUSLIM BAN"; THUS, THERE IS NO RATIONAL BASIS FOR RESPONDENTS' ESTABLISHMENT CLAUSE CLAIM	4
II. THE PROCLAMATION IS AKIN TO THE EXECUTIVE ORDER ISSUED DURING THE IRAN HOSTAGE CRISIS	10
III. PRIOR TO THE MULTI-AGENCY REVIEW AND PROCLAMATION, NUMEROUS SOURCES CONFIRMED THE WEAKNESSES IN U.S. VETTING, INCLUDING UNAVAILABILITY OF NEEDED INFORMATION	16
IV. VULNERABLE U.S. GROUPS ARE AT PARTICULAR RISK FROM MIGRANTS	30
V. THE PROCLAMATION IS NOT ANALOGOUS TO ERRONEOUS WWII REFUGEE POLICIES	34
VI. THE PROCLAMATION'S PURPOSE – PROTECTING AMERICAN CITIZENS – IS A FUNDAMENTAL DUTY AND VALUE	35
CONCLUSION	39

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Page

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INTEREST OF AMICUS CURIAE[1]

The Zionist Organization of America ("ZOA") respectfully submits this amicus brief in support of President Donald J. Trump's petition to enforce Proclamation No. 9645, entitled "*Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats*," 82 Fed. Reg. 45,161 (Sept. 27, 2017) (the "Proclamation").

The Zionist Organization of America is the oldest pro-Israel organization in the United States, founded in 1897 as the Federation of American Zionists. Supreme Court Associate Justice Louis Brandeis was an early president of ZOA. ZOA is dedicated to protecting the safety, rights and survival of the Jewish people, pro-Israel community and fellow American citizens, and promoting strong U.S.-Israel relations. ZOA educates the public, and participates in court and administrative proceedings, Congressional hearings, and media publications.

ZOA is a leader in combatting antisemitism. ZOA assists Jewish, pro-Israel and neutral students on U.S. college campuses who are attacked and threatened by radical groups. ZOA also maintains contact with Jewish leaders throughout Europe regarding the frightening increase in radical groups' physical and other

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[1] Counsel for Petitioner filed a blanket consent to amicus briefs. Counsel for Respondents consented to ZOA's filing of an amicus brief. No entity other than ZOA authored, assisted with, or paid expenses for filing this brief.

attacks against Jews, Christians, women, homosexuals and others, in the wake of extensive unvetted immigration into Europe from terrorist haven countries. ZOA President Morton A. Klein was a keynote speaker at the 2014 International Center for Combatting Antisemitism conference in Belgium.

ZOA also works to combat the threat posed by Iran and its proxies – the major entities affected by the Proclamation.

ZOA's knowledge and experience can provide important insights and background for the Court.

In addition, ZOA officers, staff and members include direct descendants of Holocaust survivors, victims and refugees. ZOA President Morton Klein is the son of Holocaust survivors, and was born in a displaced persons camp in Germany. ZOA Director of Special Projects (counsel herein) Elizabeth Berney's father was a German-Jewish refugee (who then joined the U.S. Army to fight the Nazis). Her great-grandmother and other relatives were passengers on the infamous 1939 SS St. Louis voyage.

In light of this background, ZOA is concerned that the Proclamation's opponents are making false analogies to Jews' World War II experiences; ignoring the real dangers that the Proclamation seeks to address; falsely calling the Proclamation a "Muslim ban"; and distorting Jewish/Judeo-Christian and American values to press for admitting persons into the United

States today who cannot be properly vetted, and who endanger U.S. citizens.

SUMMARY OF ARGUMENT

Respondents' Establishment Clause claims have no rational basis. The Proclamation – which suspends entry from eight countries that do not share adequate information with the United States and/or present other risks – is not and cannot constitute or effect a "Muslim ban." Only a tiny fraction (8%) of the world's 1.8 billion Muslims are potentially affected. The six affected Muslim majority countries are marked by combat zones and infested with terrorist groups and sympathizers. Three of these countries are designated state sponsors of terrorism.

U.S. embassies are closed in five of these six affected countries, due to terrorist attacks and violence, leaving America without the on-the-ground presence that is the hallmark of adequate vetting. Nationality-based restrictions were appropriate during the Iran hostage crisis and embassy seizure; they are just as appropriate today.

Numerous sources, including top officials in the former Obama administration, confirmed the vetting problems that the Proclamation addresses.

The danger posed by terrorists infiltrating into the United States in immigrant streams has been dramatically demonstrated by migrants' terrorist attacks in

Boston, San Bernardino, Orlando and Manhattan – and in Paris, London, Brussels, Cologne and elsewhere, in the wake of ISIS and other terrorists infiltrating with unvetted migration pouring into Europe.

The Proclamation's vital purpose exemplifies our most fundamental, overriding value of protecting American lives.

U.S. immigration policies during World War II toward Jews who posed no danger to Americans, who were fleeing for their lives from the Nazis, are *not* analogous to today's circumstances. Past dissimilar situations do not warrant admitting into the United States persons who cannot be properly vetted.

Jewish/Judeo-Christian and American values oppose admitting persons into the United States who cannot be properly vetted and who thus endanger U.S. citizens.

ARGUMENT

I. THE PROCLAMATION IS NOT A "MUSLIM BAN"; THUS, THERE IS NO RATIONAL BASIS FOR RESPONDENTS' ESTABLISHMENT CLAUSE CLAIM

The Proclamation was issued for *bona fide*, facially neutral, legitimate national security reasons.[2] It is not,

[2] Petitioners' Br., *Trump v. Hawaii*, No. 17-965 (Feb. 21, 2018), pp. 26-30, 58-70.

and cannot, effect a "Muslim ban." Only a tiny fraction of the world's 1.8 billion[3] Muslims are potentially affected. The Proclamation's focus is *not* on Muslims; it is on designated state sponsors of terrorism (Iran, Syria, and North Korea) and countries where the U.S. does not have an embassy or on-the-ground presence (Iran, Libya, Syria, Somalia, Yemen, North Korea) needed to collect information on potential immigrants. There is, accordingly, no rational basis for Respondents' Establishment Clause claim, which rests on the false assertion that the Proclamation's purpose is "*to enact a Muslim ban.*"[4]

Calculations from the 2018 Central Intelligence Agency World Factbook and Pew Center for Research data reveal that the total combined Muslim population of all the countries affected by the Proclamation is only 8% of the world's Muslims. The country breakdown is as follows:

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[3] Michael Lipka, *Muslims and Islam: Key findings in the U.S. and Around the World*, Pew Research Center, Aug. 9, 2017, http://www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/

[4] *E.g.*, Respondents' Brief in Opp. to Petition for Certiorari, *Hawaii v. Trump*, No. 17-965 (Jan. 12, 2018), p. 34.

Affected Country	**Est. 2017 (2010) Muslim Pop.**[5]	**Est. Percent of 2017 World Muslim Pop. in Affected Country**	**Est. Rank (Nation w/ largest Muslim population = 1)**
Chad	6.2M (6.4M)	0.3%	# 37
Iran	81.5M (74.8M)	4.5%	# 7
Libya	6.4M (6.3M)	0.3%	# 36
Somalia	10.9M (9.2M)	0.6%	# 29
Syria	15.7M (20.9M)	0.8%	# 23
Yemen	27.7M (24.0M)	1.5%	# 16
No. Korea	2,000 (3,000)	<0.001%	# 160
Venezuela	93,000 (95,000)	<0.01%	# 114
Totals	**148.4M**	**8%**	

A real "Muslim ban" would have named countries with far larger Muslim populations. However, "only *one* [affected country], Iran, is among the world's 10

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[5] Estimated 2017 Muslim populations of affected countries were calculated by multiplying each country's percentage of Muslims by its total population, using 2017 data from Central Intelligence Agency ("CIA"), *The World Factbook: Population & Religions*, Feb. 2018 updates, accessed from https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html. 2010 figures are from: Pew Research Center, *Table: Muslim Population by Country*, Jan. 27, 2011, http://www.pewforum.org/2011/01/27/table-muslim-population-by-country/

countries with the largest Muslim populations."[6] And Iran only has the seventh largest Muslim population.[7] As the above chart demonstrates, the Proclamation affects countries with relatively small Muslim populations.

A real "Muslim ban," would also have named many more than the 6 countries at issue. There are at least 50 majority Muslim nations, plus others with large Muslim pluralities or minorities.[8] The Organisation of

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[6] Drew DeSilver and David Masci, *World's Muslim Population More Widespread Than You Might Think*, Pew Research Center, Jan. 31, 2017, http://www.pewresearch.org/fact-tank/2017/01/31/worlds-muslim-population-more-widespread-than-you-might-think/. In 2010, the ten largest Muslim populations were in: Indonesia (209.1M, representing 13.1% of world's Muslim population); India (176.2M, 11%); Pakistan (167.4M, 10.5%); Bangladesh (134.4M, 8.4%); Nigeria (77.3M, 4.8%); Egypt (77M, 4.8%); Iran (73.5M, 4.6%); Turkey (71.3M, 4.5%); Algeria (34.7M, 2.2%); and Morocco (31.9M, 2.05%). Pew Research Center, *10 Countries with the Largest Muslim Populations, 2010 and 2050*, Apr. 2, 2015, http://www.pewforum.org/2015/04/02/muslims/pf_15-04-02_projectionstables74/. By 2017, these Muslim populations grew to: Indonesia 227.2M; Pakistan 197.5M; India 182M; Bangladesh 140.5M; Egypt 96.7M; Nigeria 95.3M; Iran 81.5M; Turkey 59M; Algeria 40.6M; Morocco 33.6M. (Morocco's Muslim population is now exceeded by the Muslum population of four other nations, none of which are affected by the Proclamation.) *CIA World Factbook*, *supra*.

[7] *Id.*

[8] There were 49 Muslim majority nations in 2010. Pew Research Center, *Muslim-Majority Countries*, Jan. 27, 2011, http://www.pewforum.org/2011/01/27/future-of-the-global-muslim-population-muslim-majority/. In addition, the Muslim populations of Nigeria and 3 other nations reached 50% by 2017. *CIA World Factbook*, *supra*.

Islamic Cooperation ("OIC") has 57 member states.[9] In 27 countries or territories, Islam is the official established state religion. Islam is the government-preferred religion in 3 additional countries.[10]

Moreover, one of the 6 affected "Muslim" nations, Chad, is only 52.1% Muslim; Chad has almost as many Christians and others,[11] whom the Proclamation affects equally.

A real "Muslim ban" might also have sought to curb immigration from certain European countries that, as a recent Pew study pointed out,[12] have rapidly growing Muslim populations.

Further indicating that the Proclamation is *not* a "Muslim ban," the Proclamation excluded two predominantly Muslim countries, Iraq and Sudan,[13] that were

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[9] Organisation of Islamic Cooperation, Member States webpage, https://www.oic-oci.org/states/?lan=en

[10] Pew Research Center, *Many Countries Favor Specific Religions, Officially or Unofficially*, Oct. 3, 2017, Appx. A, http://assets.pewresearch.org/wp-content/uploads/sites/11/2017/09/29162847/FULL-REPORT-FOR-WEB.pdf

[11] CIA *World Factbook*, *supra*, *Population & Religions*, Chad, updated 2/6/2018, https://www.cia.gov/library/publications/the-world-factbook/geos/cd.html

[12] Pew Research Center, *Europe's Growing Muslim Population*, Nov. 29, 2017, http://www.pewforum.org/2017/11/29/europes-growing-muslim-population/

[13] Using the same methodology as above, the estimated Muslim population of Iraq is 37.8M, and Sudan is 36.2M. *See* Central Intelligence Agency, *The World Factbook: Sudan: Population & Religions*, Iraq, updated Feb. 8, 2018, https://www.cia.gov/library/publications/resources/the-world-factbook/geos/iz.html; Sudan, updated Jan. 29, 2018, https://www.cia.gov/library/publications/resources/

included in Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed. Reg. 8977 (Jan. 27, 2017) (EO-1). Pew Research Center reported that EO-1 "would affect only about 12% of the world's Muslims."[14] The Proclamation thus *decreased* the small percentage of worldwide Muslims in countries affected by EO-1, by one-third, to 8%.

The Proclamation's exclusions and exceptions further reduce potentially affected Muslims, also evidencing that the Proclamation is *not* a "Muslim ban." The Proclamation permits entry of: Iranian students and exchange visitors (§2(b)(ii)); Chadian (§2(a)(ii)) and Yemini (§2(g)(ii)) non-immigrants entering with visas other than business or tourist visas; lawful U.S. permanent residents; already-admitted foreign nationals; foreign nationals with certain documents valid on its effective date; dual nationals; diplomatic visa holders; foreign nationals who were granted asylum; admitted refugees; and individuals who were granted withholding of removal, advance parole, or protection under the

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the-world-factbook/geos/su.html. For Sudan's percentage of Muslims, *see* United Nations Development Programme: *Sudan: The Land and the People*, https://web.archive.org/web/20120605132439/http://www.sd.undp.org/sudan%20overview.htm

[14] Drew DeSilver and David Masci, *World's Muslim Population More Widespread Than You Might Think*, Pew Research Center, Jan. 31, 2017, http://www.pewresearch.org/fact-tank/2017/01/31/worlds-muslim-population-more-widespread-than-you-might-think/

Convention Against Torture (§3(b)(i)-(vi)); and case-by-case exceptions (§3(c)).

The "Muslim ban" notion wrongly and simplistically presumes that Muslims are a monolith. Iran (the major entity affected by the Proclamation) is feared and hated by many other Muslims. In a February 10, 2018 informal poll, in Arabic, on a popular Al Jazeera TV host's twitter, 56% of the respondents (12,800 people) said they would support Israel over Iran and its militias.[15]

As discussed *infra*, the Proclamation focuses *not* on Muslims, but on nations where it is eminently understandable that the multi-agency governmental review found that insufficient information exists to properly vet immigrants: In virtually all the affected nations, the U.S. has virtually no on-the-ground presence needed to collect the essential information on potential immigrants.

II. THE PROCLAMATION IS AKIN TO THE EXECUTIVE ORDER ISSUED DURING THE IRAN HOSTAGE CRISIS

The Ninth Circuit, in its discussion of nationality-based discrimination (8 U.S.C. § 1152(a)(1)(A)), refused to pass on the legality of President Carter's Executive

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[15] Seth Frantzman, *Syrians Suffering Under Iranian-Supported Regime Praise Israel's Strikes*, Jerusalem Post, Feb. 11, 2018, http://www.jpost.com/Arab-Israeli-Conflict/Syrians-suffering-under-Iranian-supported-regime-praise-Israels-strikes-542310

Order 12172,[16] and accompanying regulations restricting visas to Iranian nationals during the Iran hostage crisis. Instead, the Ninth Circuit erroneously dismissively called those Iranian-nationality restrictions an "outlier" resulting from "special circumstances."[17]

However, similar "special circumstances" exist today with Iran, and apply to most other nations affected by the Proclamation.

Iran, Syria and North Korea are U.S. State Department designated state sponsors of terrorism.[18] Iran never returned the United States embassy that the Iranian regime seized in 1979. The U.S. "embassy" in Iran is now "virtual" (a website).[19] Iran currently holds American hostages.[20] The Iranian regime continues to view America as the "Great Satan": Hundreds of thousands of Iranians still chant "Death to America" during annual rallies.[21]

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[16] 44 Fed. Reg. 67,947 (Nov. 26, 1979), https://www.archives.gov/federal-register/codification/executive-order/12172.html

[17] *Hawaii v. Trump*, 878 F.3d 662 (9th Cir. Dec. 22, 2017), Pet. Cert. Br., 53a.

[18] U.S. State Dep't, *State Sponsors of Terrorism*, https://www.state.gov/j/ct/list/c14151.htm

[19] U.S. Virtual Embassy Iran – https://ir.usembassy.gov/tehran/

[20] Alex Diaz, *"Locked Up in Iran: Americans Still Being Held, Including Former FBI Agent Missing For 10 Years*, Fox News, Apr. 28, 2017, http://www.foxnews.com/world/2017/04/28/locked-up-in-iran-4-americans-still-being-held-including-former-fbi-agent.html

[21] Parisa Hafezi, *Iranians Chant 'Death to Israel', Burn Islamic State's Flag at Rallies*, Reuters, June 23, 2017, https://www.reuters.com/article/us-religion-ramadan-alqds-iran/iranians-chant-death-to-israel-burn-islamic-states-flag-at-rallies-tv-idUSKBN19E13O

Iran's attacks against the United States did not end in 1980. Based on a seven-year investigation, sparked by the 9-11 Commission's recommendations, the Southern District of New York found that Iran's top officials, government entities and proxies including Hezbollah: commencing in the mid-1980s, devised and planned the 9-11 attacks; in 1993 entered into a terror alliance with Al Qaeda; throughout the 1990s collaborated with Al Qaeda, and provided explosives, operational planning and training, to perpetrate terrorist attacks against the United States, including the bombings of Khobar Towers, the U.S. embassies in Kenya and Tanzania, and the U.S.S. Cole; maintained a separate training camp for Saudi terrorists; trained 9-11 pilots on Boeing 757-767-777 flight simulators in Tehran; provided safe haven in Iran to Al Qaeda operatives after 9-11; and facilitated travel by Al Qaeda 9-11 hijackers and operatives. Especially pertinent here, Iran/Hezbollah coordinated the 9-11 hijackers' acquisition of passports and visas.[22]

In 2011, Iranian agents plotted to assassinate the Saudi ambassador in a crowded Washington D.C.

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[22] *Havlish v. Bin Laden*, Findings of Fact and Conclusions of Law, 03 Civ. 9848(GBD), Dkt. #294 (S.D.N.Y. Dec. 22, 2011). *See also* ZOA staff, *Iran Planned/Funded 9/11*, Dec. 8, 2015, https://zoa.org/2015/09/10296360-iran-plannedfunded-911-now-us-arms funds-iran-terrorists/ (*Havlish* findings summary).

restaurant, which could have caused numerous American casualties.[23]

Not surprisingly, 92% of respondents to a CNN/ORC September 2015 poll stated that Iran is a threat to the United States.[24]

Iran and its proxies continue to spread terror in other nations affected by the Proclamation, including Yemen (where Iran backs the Houthis), Syria, and Latin America. Iran collaborates with North Korea on missile and nuclear development.[25]

Moreover, Iran's seizure of the U.S. Embassy is not an "outlier." Notably, five out of six of the Muslim majority nations affected by the Proclamation have no U.S. Embassy, for similar reasons.

The U.S. Embassy in Libya has remained closed, after its evacuation amid militia fighting in July 2014. It also previously suspended operations after the September 11, 2012 terrorist attack on U.S. diplomatic

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[23] *Iranian Plot to Kill Saudi Ambassador Thwarted, U.S. Officials Say*, CNN, Oct. 12, 2011, https://www.cnn.com/2011/10/11/justice/iran-saudi-plot/index.html

[24] CNN/ORC Poll, Sept. 4-8, 2015, http://www.pollingreport.com/iran.htm

[25] *Nuclear Deal Fallout: The Global Threat Of Iran*, House of Representatives Committee on Foreign Affairs, Subcommittee on Terrorism, Nonproliferation and Trade, May 24, 2017, http://docs.house.gov/meetings/FA/FA18/20170524/106032/HHRG-115-FA18-Transcript-20170524.pdf

facilities in Benghazi and murder of the U.S. Ambassador and three other Americans.[26]

Syria is a war zone: The U.S. Embassy in Syria suspended operations on February 6, 2012, and is still closed.[27]

Factors such as ISIS's seizure of Syrian passport blanks, passport-making machines, and identity information in 2015, which gave ISIS the ability to make fake Syrian passports,[28] also impede America's ability to vet Syrian immigrants.

The U.S. Embassy in Yemen has been closed, and all consular services have been suspended since February 2015, when Iranian-sponsored Houthis seized Yemen's capital, Sana'a.[29] Thousands of Houthi supporters marched through Sana'a shouting the

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[26] U.S. Embassy in Libya website, https://ly.usembassy.gov/embassy/tripoli/. *See also Libyan Militia Storm U.S. Embassy in Tripoli*, Al Jazeera, Sept. 1, 2014, https://www.aljazeera.com/news/middleeast/2014/08/libyan-militia-storm-us-embassy-tripoli-201483113585774141.html

[27] U.S. Embassy in Syria website, https://sy.usembassy.gov/embassy/

[28] *Islamic State Can Make Fake Syrian Passports: U.S. Report*, *Reuters*, Dec. 11, 2015, https://www.reuters.com/article/us-mideast-crisis-usa-passports/islamic-state-can-make-fake-syrian-passports-u-s-report-idUSKBN0TV02820151212

[29] U.S. Embassy in Yemen website, https://ye.usembassy.gov/embassy/. *See also* Mohammed Ghobari, *United States Closes Its Embassy in Conflict-Hit Yemen*, Reuters, Feb. 10, 2015, https://www.reuters.com/article/us-yemen-security-usa/united-states-closes-its-embassy-in-conflict-hit-yemen-idUSKBN0LE25720150211

Houthi/Iranian slogan: "Death to America, Death to Israel."[30]

As for terrorism-infested Somalia, "The U.S. does not have an Embassy or any other diplomatic presence in any part of Somalia [and] cannot provide services to U.S. citizens in Somalia."[31] In November 2017, the U.S. also ordered all non-essential U.S. employees in its Mogadishu mission to leave until further notice, due to threats against them.[32]

As discussed below, the previous administration and other experts repeatedly explained that the absence of a U.S. on-the-ground presence made adequate vetting impossible. Thus, the Trump administration's multi-agency review properly found information deficiencies regarding terror-supporting and terror-plagued nations where the U.S. has no embassy, diplomatic relations, or presence.

Nationality-based restrictions were appropriate during the Iran hostage crisis and embassy seizure; and are just as appropriate today.

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[30] Kim Hjelmgaard and Jane Onyanga-Omara, *Yemen Rebels Seize U.S. Embassy Vehicles as Diplomats Flee*, USA Today, Feb. 11, 2015, https://www.usatoday.com/story/news/world/2015/02/11/yemen-embassy-closures/23220185/

[31] U.S. Embassy in Somalia website, https://so.usmission.gov/u-s-citizen-services/

[32] *Specific Threat Information Against U.S. Citizens U.S. Mission to Somalia November 4, 2017*, U.S. Mission to Somalia, https://so.usmission.gov/security-message-u-s-citizens-specific-threat-information-u-s-citizens-u-s-mission-somalia-november-4-2017/

III. PRIOR TO THE MULTI-AGENCY REVIEW AND PROCLAMATION, NUMEROUS SOURCES CONFIRMED THE WEAKNESSES IN U.S. VETTING, INCLUDING UNAVAILABILITY OF NEEDED INFORMATION

Prior to the U.S. government's multi-agency review as to whether foreign governments provide sufficient information to screen their nationals, bipartisan Congress members, top Obama administration officials, and other experts warned about terrorist infiltration dangers and America's inability to adequately vet entrants from terrorist havens/conflict zones, especially Syria. The Proclamation addresses, in a religion-neutral constitutional manner, the precise national security/vetting concerns that Congress and multiple experts previously highlighted.

For instance:

- **Former FBI Director James Comey** testified before the Homeland Security Committee on October 21, 2015:

> If someone has never made a ripple in the pond in Syria in a way that would get their identity or their interests in our database, **we can query our database until the cows come home, but there will be nothing showing up because we have no record of them** . . . we can only query against that which we have collected . . . **Syrian refugees will be harder to check because, unlike in Iraq, U.S. soldiers have not been on the ground collecting information on the**

> **local population**. . . . [W]ith Iraqi databases, we had far more data because of our country's work there for a decade. This is a different situation . . . yet a number of people who were of serious concern [slipped through the screening of Iraqi war refugees, including two arrested on terrorism charges].[33]

Comey also testified before the House Judiciary Committee the next day that we have a "dramatically" less robust data set for Syrian refugees than for Iraqi refugees.[34]

A year later, on September 28, 2016, Comey again testified before the House Judiciary Committee about the same lack of data on Syrian migrants, saying:

> The challenge remains, **especially with respect to folks coming from Syria, we are unlikely to have anything in our holdings**. That is, with people coming from Iraq, the United States Government was there for

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[33] *Nation's Top Security Officials' Concerns On Refugee Vetting*, H. Rep. Homeland Security Committee website, Nov. 19, 2015, https://homeland.house.gov/press/nations-top-security-officials-concerns-on-refugee-vetting/ (quoting Comey Oct. 21, 2015 testimony). *See also Homeland Security Committee Hearing on Worldwide Threats and Homeland Security Challenges*, video, Oct. 21, 2015, https://homeland.house.gov/hearing/worldwide-threats-and-homeland-security-challenges/

Emphasis is added unless otherwise specified.

[34] *Oversight of the Federal Bureau of Investigation, Hearing Before the Committee on the Judiciary*, H. Rep., 114th Cong., 1st Sess., Oct. 22, 2015, No. 114-55, https://judiciary.house.gov/wp-content/uploads/2015/10/114-55_97262.pdf, p. 54. *See also id.*, at 28, 53-55, 64 and 70.

> a very long period of time, we had biometrics, we had source information. We are unlikely to have that kind of picture about someone coming from Syria. . . .[35]

• **Former Director of National Intelligence Gen. (ret.) James Clapper** testified:

> "We obviously don't put it past the likes of ISIS to infiltrate operatives among these refugees, that's a huge concern of ours."[36]

• **FBI Assistant Director Michael Steinbach** stated: "[T]he concern in Syria is that we don't have the systems in places on the ground to collect the information."[37]

• **Former National Terrorism Center Director Nicholas Rasmussen** testified in response to Congressman Lamar Smith (R-TX)'s query regarding whether terrorist organizations were likely to infiltrate the U.S. to commit terrorist acts: "We have certainly seen terrorist groups talk about, think about, exactly what you are describing."[38]

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[35] *Oversight of the Federal Bureau of Investigation, Hearing Before the Committee on the Judiciary,* H. Rep., 114th Cong., 2nd Sess., Sept. 28, 2016, No. 114-91, https://judiciary.house.gov/wp-content/uploads/2016/09/114-91_22125.pdf, p. 94. *See also id.*, pp. 64-65, 85-86, 93-95, and 115-116.

[36] *Nation's Top Security Officials' Concerns on Refugee Vetting, supra* n.2 (quoting Clapper Sept. 9, 2015 statement).

[37] *Id.* (quoting Steinbach Feb. 12, 2015 statement).

[38] *Homeland Security Committee Hearing on Worldwide Threats, supra* n.2, minute 55:00-57:00; Lana Shadwick, *Homeland Security Hearing Reveals Why Accepting Syrian Refugees Risks*

- **Lebanon's Education Minister Elias Bousaab** warned former British Prime Minister David Cameron that two in every 100 Syrian migrants smuggled into Europe are ISIS-trained jihadists, sent under cover to attack western targets.[39]

- **ISIS Operative:** A Syrian ISIS smuggler revealed in 2015 that ISIS had already smuggled 4,000 ISIS jihadists into Europe.[40]

- **House Homeland Security Committee, Counterterrorism and Intelligence Subcommittee Chairman, Congressman Peter King** (R-NY) stated on national television:

> [W]e know [ISIS is] going to try [to seed ISIS terrorists among refugees from Syria], . . . in the post-9/11 era, we always have to assume the worst, and there's a very good chance here that the worst will happen. **There is absolutely no way – no real way of vetting**, to any extent, these refugees coming in . . .

American Lives – video, Nov. 17, 2015, http://www.breitbart.com/big-government/2015/11/17/homeland-security-hearing-reveals-accepting-syrian-refugees-risks-american-lives/

[39] Jack Doyle, *Two in Every 100 Syrian Migrants are ISIS fighters, PM is Warned: Lebanese Minister Tells Cameron Jihadists are Coming 'Under Cover' to Attack the West*, Daily Mail, Sept. 15, 2015, http://www.dailymail.co.uk/news/article-3234458/Two-100-Syrian-migrants-ISIS-fighters-PM-warned-Lebanese-minister-tells-Cameron-extremist-group-sending-jihadists-cover-attack-West.html

[40] Aaron Brown, *'Just wait . . . ' Islamic State Reveals it has Smuggled THOUSANDS of Extremists into Europe*, UK Express, Nov. 18, 2015, http://www.express.co.uk/news/world/555434/Islamic-State-ISIS-Smuggler-THOUSANDS-Extremists-into-Europe-Refugees

> **there is no intelligence on the ground**. We don't have people on the ground who can vouch for everyone. **There's obviously no government records we can go to. Syria is a totally chaotic country, and it's a hotbed of al Qaeda and ISIS. And we have no idea who's coming out of Syria. . . . [I]t definitely puts the United States at risk**. . . . We have to seal the borders now, and have the strictest possible vetting.[41]

Congressman King also wrote:

> [W]e know that ISIL will attempt to infiltrate its members into the United States. . . . Since the beginning of the year, **the FBI has arrested more than 50 individuals connected with ISIL and plotting attacks in the homeland; we cannot afford to compound this threat. With the lack of stable foreign governments and on-the-ground intelligence in Syria, our ability to vet refugees is significantly degraded**. The [Obama] White House announcement that 10,000 additional Syrian refugees will be admitted next year is contrary to the advice of law enforcement and intelligence professionals.[42]

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[41] Ian Hanchett, *Peter King: 'No Real Way of Vetting' Syrian Refugees*, Breitbart, Sept. 15, 2015, http://www.breitbart.com/video/2015/09/15/peter-king-no-real-way-of-vetting-syrian-refugees/

[42] Peter King, *Rep. Peter King: Refugees Bring Security Risks*, USA Today, Sept. 13, 2015, https://www.usatoday.com/story/opinion/2015/09/13/syrian-refugees-rep-peter-king-editorials-debates/72212362/

Congressman King noted that his statements were based on classified briefings to Congress about the U.S. vetting process.[43]

- **House Homeland Security Committee Chairman, Congressman Michael McCaul** (R-TX) issued a press release stating:

> Many Americans are understandably concerned about the threat posed by inadequate security screening procedures. . . . **ISIS themselves have stated their intention to take advantage of the crisis to infiltrate** the west. We have to take this threat seriously.[44]

Chairman McCaul also released a compendium of ten high-level Obama administration officials' warnings about vetting inadequacies and infiltration dangers, along with his own statement that:

> It is the [Obama] Administration's own officials that were warning us about this [vetting] program. It's not me making this up. This came from testimony that came from both F.B.I. and homeland security officials in briefings and in public testimony. . . . [T]he fact of the matter is: the threat is real. ISIS has said in their own words that they want to exploit

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[43] Gregg Birnbaum, *Pete King: No Vetting, No Syrian Refugees*, CNN, Nov. 17, 2015, http://www.cnn.com/2015/11/17/politics/pete-king-vetting-syrian-refugees/index.html

[44] *McCaul Introduces Bill to Give Congress Oversight of Syrian Refugee Resettlement Program*, Congressman Michael McCaul Press Release, Sept. 18, 2015, https://mccaul.house.gov/media-center/press-releases/mccaul-introduces-bill-to-give-congress-oversight-of-syrian-refugee

> it to infiltrate the West. Again, it is not a threat I am making up, it's a threat their [Obama's] own officials have warned us about.[45]

• **House Committee on the Judiciary Chairman Congressman Bob Goodlatte** wrote to then-President Obama that Obama's Syrian admissions plan:

> . . . seems ill-conceived considering numerous statements by security officials within your Administration about the current lack of ability to properly vet. . . .

Congressman Goodlatte then quoted Comey's admissions (described above); former Homeland Security Secretary Jeh Johnson's concession, "It is true that **we're not going to know a whole lot about a lot of these Syrians**"; U.S. Citizenship and Immigration Services (USCIS) officials' admissions that Syria does not have any databases that the U.S. can access to run security checks; and FBI Counterterrorism Division Assistant Director Michael Steinbach's testimony that

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[45] *Nation's Top Security Officials' Concerns On Refugee Vetting*, *supra*, n.2 (quoting warnings regarding vetting from former Obama administration officials: FBI Director James Comey; CIA Director John Brennan; National Terrorism Center Director Nicholas Rasmussen; Homeland Security Secretary Jeh C. Johnson; Special Presidential Envoy for the Global Coalition to Counter ISIL Gen. (ret.) John Allen; Director of National Intelligence James Clapper; FBI Assistant Director Michael Steinbach; and Homeland Security Under Secretary for Intelligence and Analysis Francis X. Taylor; and Institute for the Study of War Chairman General (ret.) Jack Keane).

"all the data sets" to which intelligence services would normally go "don't exist."[46]

- **Senator Chuck Schumer** (D-NY, current House Minority Leader) said "a pause may be necessary" on the entry of Syrians to the U.S.[47]

- **Senator Dianne Feinstein** (D-CA, Senate Intelligence Committee ranking Democrat) stated that the U.S. needs to examine the role the visa process plays in security risks, and that ISIS has "got people all throughout Europe."[48]

- **Senators Joe Manchin** (D-WV) and **Shelley Moore Capito** (R-WV) and additional Senators sent a bipartisan letter to then-President Obama, following the massive ISIS terror attacks in Paris in November 2015, stating:

> The U.S. government must redouble its efforts to keep the American people safe. We believe that an essential component of that effort is ensuring that no refugee related to the Syrian crisis is admitted to the United States unless

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[46] House of Representatives Judiciary Committee press release, *Goodlatte: Why Does the President Ignore Concerns About Syrian Refugees?*, Oct. 27, 2015, https://judiciary.house.gov/press-release/goodlatte-why-does-the-president-ignore-concerns-about-syrian-refugees/; Congressman Bob Goodlatte Letter to President Barack Obama, Oct. 27, 2015, https://judiciary.house.gov/wp-content/uploads/2016/02/102715_Letter-to-President-Obama.pdf

[47] *Schumer Joins Republicans Questioning Obama's Refugee Plan*, Newsmax, Nov. 17, 2015, http://www.newsmax.com/Headline/schumer-immigration-plan-syrian/2015/11/17/id/702593/

[48] *Id.*

> the U.S. government can guarantee, with 100 percent assurance, that they are not members, supporters, or sympathizers of [ISIS]. . . .
>
> Reports indicate that ISIS apparently utilized the flow of refugees to infiltrate at least one of the Paris attackers into Europe. These facts require a serious and objective reexamination of the Administration's policy toward Syrian refugees to avoid unnecessary risks. . . . [O]ur first and most important priority must be to ensure that any refugee who comes to the United States does not present a threat to the American people. . . . The fact that ISIS may have utilized the flow of refugees to infiltrate Europe and potentially the United States is not a surprise. . . . [Discusses DNI Clapper and FBI Director Comey's testimony].[49]

• **Congressman Bennie Thompson** (D-MS) told Comey at the October 21, 2015 Homeland Security Committee hearing: "a lot of us are concerned about whether you have enough information available to you to do an accurate vetting."[50]

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[49] *In Wake of Paris Attacks, Manchin Calls for Increased Efforts to Keep the U.S. Safe: Senators Say That the U.S. Should Not Accept Any Syrian Refugees Until They Are Thoroughly Vetted to Guarantee 100 Percent That They Are Not Involved With ISIS*, Sen. Manchin website, Nov. 16, 2015, https://www.manchin.senate.gov/public/index.cfm/press-releases?ID=2a6fde7b-055b-4699-a296-575197786f49

[50] Taylor Rushing, *FBI Admits There's No Way To Screen All The Syrian Refugees The Obama Administration Plans To Accept Into The U.S.*, Daily Mail, Oct. 21, 2015, http://www.dailymail.co.uk/

- **House Speaker Paul Ryan** (R-WI) called for a pause in Syrian refugee resettlement in the U.S., noting: "This is not about politics. This is about national security."[51]

- **Thirty-one U.S. governors** announced after the Paris ISIS attacks that they opposed allowing Syrian migrants to settle in their states.[52]

- **Former federal terrorism prosecutor Andrew McCarthy** wrote:

> A background check is only as good as the available information about a person's background. In refugee pipelines like **Syria, Iraq, Afghanistan, Somalia, and Sudan, such information is virtually nonexistent**. . . .

McCarthy also described widespread immigrant violence in Europe – including enclaves where the law is ignored; thousands of torched cars; attacks on French and Belgian police; immigrant gangs controlling Malmö, Sweden; and the British soldier beheaded

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news/article-3283587/FBI-admits-s-no-way-screen-Syrian-refugees-Obama-administration-plans-accept-US.html

[51] CNN Wire Service, *Speaker Paul Ryan Calls for Pause in Refugee Program: 'Better to be Safe than to be Sorry'*, Nov. 17, 2015, http://fox6now.com/2015/11/17/house-speaker-paul-ryan-calls-for-pause-in-refugee-program/

[52] Byron Tau and Kristina Peterson, *Republican Governors Object to White House Syrian Migrant Policy*, Wall Street Journal, Nov. 16, 2015, https://www.wsj.com/articles/u-s-governors-object-to-white-house-syrian-migrant-policy-1447699052

in broad daylight by jihadists known to British intelligence services.

McCarthy further noted that "vetting only works if you vet for the right thing." McCarthy explained that Washington only vets for "ties to terrorism" (defined as violent extremism) – and fails to vet for supremacist ideologies that breed tomorrow's terrorists.[53]

- **Polling:** An Arab Center for Research and Policy Studies' poll of 900 Syrian refugees in late 2015 found that one third of Syrian refugees are ISIS sympathizers, and 13% support ISIS.[54] One out of every eight supported ISIS! A 2007 poll showed that 75% of Syrians supported financially assisting terrorist organizations Hamas, Islamic Jihad, and Hezbollah.[55]

A February 2017 poll reported that "a sizeable percentage (37%) [of Syrians] fear that 'even if Daesh

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[53] Andrew McCarthy, *The Controversy Over Syrian Refugees Misses the Question We Should Be Asking*, Nat'l Review, Nov. 28, 2015, http://www.nationalreview.com/article/427698/syrian-refugees-tk-andrew-c-mccarthy

[54] Kristinn Taylor, *SHOCK POLL: Third of Syrian Refugees ISIS Sympathizers, 13% Support*, Gateway Pundit, Nov. 17, 2015, http://www.thegatewaypundit.com/2015/11/shock-poll-third-of-syrian-refugees-isis-sympathizers-13-percent-support/ (linked to Arab Center for Research and Policy Studies poll, *The Military Campaign against the Islamic State in Iraq and the Levant: Arab Public Opinion*, http://english.dohainstitute.org/file/Get/40ebdf12-8960-4d18-8088-7c8a077e522e)

[55] Arab/Muslim Public Opinion Polls: Public Opinion in Syria, Jewish Virtual Library, http://www.jewishvirtuallibrary.org/public-opinion-in-syria

[ISIS] is defeated militarily their ideology will likely re-emerge with another group in the future.'"[56]

- **Paris attacks: ISIS infiltration from Syria:** The coordinated ISIS attacks on the Bataclan theater, a soccer stadium and cafes throughout Paris in November 2015 were planned in Syria. Six of the eight Paris attackers spent time in Syria.[57] At least one of the Paris assailants posed as a Syrian refugee to enter Europe, via Greece and the Balkans, using a fake Syrian passport.[58]

The Paris attacks also demonstrated terrorists' ability to hide their plans and affiliations – even from close family. Mohammed Abdeslam said that he and the rest of his family did not know that his brothers were planning the Paris massacres.[59]

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[56] ORB Int'l, *Syrian Conflict – 6th Anniversary Poll*, Apr. 5, 2017, https://www.orb-international.com/2017/04/05/syria-conflict/

[57] Eliott C. McLaughlin and Catherine E. Shoichet, *Paris attacks: What We Know So Far*, CNN, Nov. 17, 2015, http://www.cnn.com/2015/11/16/europe/paris-attacks-at-a-glance/

[58] Marcus Walker and Noemie Bisserbe, *Paris Stadium Attacker Got to Europe Using Fake Syrian Passport: Man Apparently Posed as Refugee, Entered Through Greek Island of Leros*, Wall Street J'nal, Nov. 16, 2015, https://www.wsj.com/articles/paris-stadium-attacker-entered-europe-via-greece-1447698583

[59] Gordon Rayner and Camilla Turner, *Suicide Bomber 'Blew Himself Up Because of Stress', Says Ibrahim Abdeslam's Family*, Telegraph, Nov. 16, 2015, http://www.telegraph.co.uk/news/worldnews/islamic-state/11998297/Suicide-bomber-blew-himself-up-because-of-stress-says-Ibrahim-Abdeslams-family.html

U.S. vetting systems thus need to be able to ferret out more than terrorists' own close family members know.

- **U.S. Vetting Failures:** Legal immigrants who have obtained U.S. citizenship were subsequently arrested on terrorism-related charges, including: a Boston massacre bomber; a Somali who trained with a terrorist group in Syria and plotted to execute American soldiers at a Texas military base; the Kuwaiti-born shooter of four U.S. Marines in Chattanooga, Tennessee[60]; and a Somali-born refugee who obtained U.S. citizenship and plotted to bomb a crowded Christmas tree-lighting ceremony in Portland, Oregon. (EO-2.[61]) EO-2 noted that "[s]ince 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States."

Even when the United States is warned about terrorist ties, U.S. vetting has spectacularly failed. Russia's intelligence agency cabled the FBI twice warning that immigrant Tamerlan Tsarnaev associated with

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[60] Rachel Stolzfoos, *At Least 15 U.S. 'Citizen Terrorists' Are Also Legal Immigrants*, Daily Caller, Nov. 18, 2015, http://dailycaller.com/2015/11/18/at-least-15-us-citizen-terrorists-are-also-legal-immigrants/

[61] Executive Order No. 13780, Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed. Reg. 13209 (Mar. 6, 2017), https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/ (EO-2)

militants.[62] Yet the FBI found that Tsarnaev had no links to terrorism, and no alert was triggered when Tsarnaev subsequently flew in and out of JFK airport. On September 11, 2011, the Tsarnaev brothers brutally slit the throats of three young Jewish men whom they had befriended,[63] and, in April 2013, they bombed the Boston marathon, murdering three more people and wounding over 264 innocent runners and bystanders.

The vetting of San Bernardino killer Tashfeen Malik failed to uncover that the address listed on her visa application did not exist.[64] Dr. Ben Carson observed: "[I]f [] vetting resulted in missing someone who carried out such a horrendous crime, that should be the end of the argument right there" for admitting Syrians into the U.S.[65]

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[62] *Russia Warned U.S. About Boston Marathon Bomb Suspect Tsarnaev*, Reuters, Mar. 25, 2014, http://www.reuters.com/article/us-usa-explosions-boston-congress-idUSBREA2P02Q20140326

[63] *2011 Waltham Triple Murder*, Wikipedia, https://en.wikipedia.org/wiki/2011_Waltham_triple_murder

[64] AP, *Jihadi Bride Entered The U.S. on a 'Fiance Visa' on Which She Entered a FALSE Home Address*, Daily Mail, Dec. 4, 2015, http://www.dailymail.co.uk/news/article-3346831/California-killing-spurs-concerns-fiance-visa-program.html#ixzz3thCBWb6R

[65] Jose DelReal, *Ben Carson Says San Bernardino Shooting Should End Debate on Syrian Refugees*, Washington Post, Dec. 4, 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/12/04/ben-carson-says-san-bernardino-shooting-should-end-debate-on-syrian-refugees/?utm_term=.4d928d0a2f7d

IV. VULNERABLE U.S. GROUPS ARE AT PARTICULAR RISK FROM MIGRANTS

While all Americans are at risk, inadequately vetted migrants especially threaten vulnerable American groups, including American Jews, homosexuals, women, various Christian denominations, etc.

The ISIS shooters who perpetrated the San Bernardino Christmas party massacre specifically targeted a pro-Israel gentile Messianic Jew to murder first, after threatening him that Jews and Christians deserve to die.[66] The ISIS shooter in Orlando specifically targeted a gay nightclub.[67]

In December 2017, a Syrian-born Imam called for murdering Jews, during his sermon at a North Carolina mosque.[68]

In France, radical migrants, ISIS, etc. have been terrorizing French Jews with hundreds of physical attacks and threats each year[69]; murdered a Rabbi and

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[66] Uriel Heilman, *Messianic San Bernardino Victim was Gentile Supporter of Israel, Argued with Killer on Islam*, Times of Israel, Dec. 5, 2015, http://www.timesofisrael.com/messianic-san-bernardino-victim-was-gentile-supporter-of-israel/

[67] Monica Hesse, *The Target was a Gay Nightclub*, Washington Post, June 12, 2016, https://www.washingtonpost.com/lifestyle/style/the-target-was-a-gay-nightclub-the-target-was-also-all-of-us/2016/06/12/74de576c-30cb-11e6-8f7-7b6c1998b7a0_story.html?utm_term=.6d3977569459

[68] *ZOA: Fire Four Imams Who Called for Murder of Jews*, Jan. 15, 2018, https://zoa.org/2018/01/10377423-zoa-fire-four-imams-calling-for-murdering-jews/

[69] Michael Kaplan, *Attacks on France's Jews Surge Amid Concerns of Rising Anti-Semitism in Europe*, Int'l Business Times,

three innocent little Jewish schoolchildren[70]; murdered four Jewish shoppers at a kosher grocery[71]; and murdered an elderly Catholic priest.[72] Terrorists repeatedly targeted the Bataclan theater because Jews owned it.[73]

Syrians are indoctrinated from an early age to celebrate martyrdom and violence towards "enemies," and to hate Jews. Textbooks used in Syrian schools from 2001 through 2015 teach Syrian children that martyrdom and violence towards "enemies" are the path to glory; that Jews are evil people whose treachery brought the Holocaust upon themselves; and that Zionism is "world Imperialism" headed by the United States.[74]

July 13, 2015, http://www.ibtimes.com/attacks-frances-jews-surge-amid-concerns-rising-anti-semitism-europe-2006003

[70] AP, *French Gunman Who Killed Jewish Children 'Was Raised an Anti-Semite'*, The Guardian, Nov. 11, 2012, https://www.theguardian.com/world/2012/nov/11/french-gunman-mohamed-merah-racist

[71] Noah Rayman, *Kosher Grocery Assault Confirms Worst Fears of French Jews*, Time, Jan. 9, 2015, http://time.com/3661697/paris-terror-attack-kosher-grocery-jewish/

[72] *Islamic State Murder of Priest is Pure Savagery*, USA Today, July 30, 2016, https://www.usatoday.com/story/opinion/editorials/2016/07/30/islamic-state-murder-of-priest-is-pure-savagery/92609244/

[73] AP, *Jewish Owners Recently Sold Paris's Bataclan Theater, Where IS Killed Dozens*, Times of Israel, Nov. 14, 2015, http://www.timesofisrael.com/jewish-owners-recently-sold-pariss-bataclan-theater-where-is-killed-dozens/

[74] David Bedein, with Michael Kuttner, Ruthy Amkraut, Maayan Avery, Alena Cisneros, *What do Syrians Learn in Their Schools?*, Israel Resource Review, Dec. 8, 2015, http://israelbehind

The leader of Germany's Jewish community, Dr. Josef Schuster, implored German Chancellor Angela Merkel to limit refugees. Schuster explained that many immigrants

> come from cultures in which hate towards Jews and intolerance are fixed components. Don't only think about the Jews, think about equal rights for women and the treatment of homosexuals.[75]

A leaked German intelligence document warned that fully integrating migrants will be "impossible," and that Germany was importing antisemitism, extremism and conflict.[76] On New Years' Eve 2016, Middle Eastern migrants raped and assaulted 1,200 women in Cologne and other German cities.[77]

Radical Middle Eastern migrants in Europe have terrorized Jews: A Syrian migrant threw grenades at

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thenews.com/what-do-syrians-learn-in-their-schools/14197/?utm_source=wysija&utm_medium=email&utm_campaign=ibn-today

[75] Sue Reid, *Migrant Blunder Splitting Germany In Two: Weeks Ago, Merkel Threw Open Germany's Doors. Today, Amid Fears It's Importing Anti-Semitism, Many Worry Their Way Of Life Is Under Threat*, Daily Mail, Nov. 27, 2015, http://www.dailymail.co.uk/news/article-3337002/Migrant-blunder-splitting-Germany-two-Weeks-ago-Merkel-threw-open-Germany-s-doors-Today-amid-fears-s-importing-anti-Semitism-worry-way-life-threat.html

[76] *Id.*

[77] Rick Noack, *Leaked Document Says 2,000 Men Allegedly Assaulted 1,200 German Women on New Year's Eve*, Washington Post, July 11, 2016, https://www.washingtonpost.com/news/worldviews/wp/2016/07/10/leaked-document-says-2000-men-allegedly-assaulted-1200-german-women-on-new-years-eve/?utm_term=.c69354ce1910

Jewish children waiting for a bus, killing a 15-year-old Jewish boy and wounding dozens more. Elderly Holocaust survivors were violently attacked in their Amsterdam apartment. Terrorists attacked a Bar Mitzvah in Austria, trying to murder the children inside. Cries of "death to the Jews" fill certain Paris streets. Mobs screamed at Jews in Marseille: "*Vive* Mohamed Merah [murderer of Jewish children]; F___ the Jews." There are frightening attacks on European synagogues.[78]

In the United States, Jews (especially college students) are subjected to increasing antisemitic attacks. At City University of New York, Vassar, University of California, and elsewhere, the hate group "Students for Justice in Palestine" ("SJP") holds antisemitic rallies, chanting "Jews out of CUNY!", "Zionists out of CUNY!", "We support the Intifada!", and "Death to the Zionists!", making it unsafe for Jewish students at some universities.[79] ("Intifada" is the violent "uprising"

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[78] Daniel Greenfield, *Opposing Syrian Muslim Refugees Is A Jewish Value*, Frontpage Mag., Dec. 2, 2015, http://www.frontpagemag.com/fpm/260961/opposing-syrian-muslim-refugees-jewish-value-daniel-greenfield. *See also* Jeffrey Goldberg, *Is it Time for Jews to Leave Europe?*, Atlantic, April 2015, https://www.theatlantic.com/magazine/archive/2015/04/is-it-time-for-the-jews-to-leave-europe/386279/

[79] *E.g.*, *ZOA Letter to CUNY Leaders About Anti-Semitic, Violence-Inducing Rallies There*, Feb. 22, 2016, http://zoa.org/2016/02/10315402-letter-to-cuny-chancellor-and-board-of-trustees-jew-haters-spread-fear-at-cuny-colleges/; Ziva Dahl, *It's Dangerous to Be Jewish and Pro-Israel at Vassar College*, Algemeiner, Nov. 16, 2015, http://www.algemeiner.com/2015/11/16/its-dangerous-to-be-jewish-and-pro-israel-at-vassar-college/; Ryan Torok, *Berkeley Students Chant for Intifada* [video], Jewish Journal, Oct. 14, 2015, http://jewishjournal.com/news/nation/california/178556/

in which Palestinian Arabs bombed, murdered and maimed thousands of innocent Jews.) At Temple University, an SJP sympathizer punched an innocent Jewish student in the face, and a gang of SJP members screamed at the Jewish student that he was a "Zionist pig" and "kike" and deserved it.[80]

American synagogues in New York, Los Angeles, Chicago and Washington D.C. have been repeated targets[81] of terrorist plots.

The Proclamation's restrictions on immigration from countries that do not provide sufficient vetting information is essential for keeping these dangerous situations from becoming even more rampant.

V. THE PROCLAMATION IS NOT ANALOGOUS TO ERRONEOUS WWII REFUGEE POLICIES

The Proclamation's restrictions are *not* analogous to immigration policies in past situations such as the Jews fleeing from the Nazis. As Congressman Peter King noted, those past refugees "were not a threat to

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[80] *ZOA Demands Expulsion of Temple U. Student Who Made Anti-Semitic Violent Attack on Jewish Student*, Aug. 21, 2014, http://zoa.org/2014/08/10256050-zoa-demands-expulsion-of-student-at-temple-u-who-made-anti-semitic-violent-attack-on-jewish-student/

[81] *E.g.*, Benjamin Weiseraug, *Convictions in Synagogue Bombing Plot Upheld*, NY Times, Aug. 23, 2013, http://www.nytimes.com/2013/08/24/nyregion/appeals-court-upholds-convictions-of-men-in-bronx-synagogue-plot.html; AP, *FBI Thwarts Muslim's Plot to Bomb Florida Synagogue*, NY Post, May 3, 2016, http://nypost.com/2016/05/03/fbi-thwarts-muslims-plot-to-bomb-florida-synagogue/

the United States,"[82] and were fleeing for their lives. By contrast, migrants from the nations affected by the Proclamation do pose a threat, and may be coming to the U.S. for economic reasons after already living in a safe country.[83]

Jews fleeing from the Nazis also lacked viable alternatives. Britain's infamous 1939 White Paper slammed shut Israel's doors to Jewish immigration, thereby violating Britain's League of Nations Mandate.[84] Other nations were overrun by the Nazis, or refused Jews entry. By contrast, migrants from affected countries have alternatives, and may already be located in areas where the U.S. can compassionately give them aid, without risking U.S. citizens' lives.[85]

VI. THE PROCLAMATION'S PURPOSE – PROTECTING AMERICAN CITIZENS – IS A FUNDAMENTAL DUTY AND VALUE

The Proclamation's purpose – protecting U.S. citizens from terrorist attacks and other public safety threats (§1) – is a fundamental, overriding value.

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[82] *Peter King: 'No Real Way of Vetting' Syrian Refugees*, *supra* n.11.

[83] *Id.*

[84] *British White Papers: 1939*, Jewish Virtual Library, http://www.jewishvirtuallibrary.org/british-white-paper-of-1939

[85] Barbara Hollingsworth, *Former Ambassador to UN: U.S. Has 'No Obligation' to Accept Syrian Refugees*, CNS News, Nov. 16, 2015, http://www.cnsnews.com/news/article/barbara-hollingsworth/former-un-ambassador-us-has-no-obligation-accept-syrian-refugees

The U.S. Declaration of Independence lists the right to "life" as the first inalienable right, and recognizes that our government must control admissions into the country, to protect American lives. The Declaration of Independence condemned King George both for interfering with the immigration of persons whom the American colonists wished to admit, and for transporting violent foreigners into the U.S. to kill and tyrannize American colonists, stating:

> He [King George] is at this time transporting large Armies of foreign Mercenaries to compleat [sic] the works of death, desolation, and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.[86]

Emma Lazarus's poem, *The New Colossus*, inscribed in part on the Statue of Liberty, likewise recognizes that America welcomes those who "yearn to breathe free," but *not* those foreigners seeking to conquer and tyrannize us. The poem warns: "Not like the brazen giant of Greek fame, With conquering limbs, astride from land to land. . . . Keep, ancient lands, your storied pomp!"[87] Emma Lazarus was also horrified by Russia's deadly anti-Jewish pogroms. She would be equally aghast if her poetry was misused to admit infiltrators who could harm U.S. citizens.

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[86] Declaration of Independence (July 4, 1776).

[87] Emma Lazarus, *The New Colossus* (1883), https://www.poetryfoundation.org/poems/46550/the-new-colossus

The U.S. Immigration and Nationality Act (INA), likewise does not countenance admission of foreigners who persecute or harm others.[88] Informed vetting is required to determine whether a potential immigrant harmed others.

The Torah (the Five Books of Moses) and Judeo-Christian values also cherish preserving citizens' lives above unfettered immigration. "[T]he American Constitution was rooted in ethical and political principles whose source is . . . the Torah, the Five Books of Moses."[89]

Preserving human life (*pikuach nefesh*) takes precedence over Judaism's other commandments.[90] The Torah and Talmud repeatedly command that we avoid situations and people who endanger lives, and erect barriers to prevent death and injury. Specific commands include: "Take heed and carefully guard your lives"[91]; "Distance yourself from a bad neighbor; do not connect yourself with a *rasha* [evildoer]"[92]; and "Make a fence for your roof, so you will not place blood in your house if a fallen one falls off of it."[93] These commandments are interpreted expansively, and require

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[88] Immigration and Nationality Act, 8 U.S.C. § 1101(42).

[89] Prof. Paul Eidelberg, *Jewish Roots of the American Constitution*, http://britam.org/eidelberg.html

[90] Rabbi Simon Glustrom, *Saving a Life* (*Pikuach Nefesh*), http://www.myjewishlearning.com/article/saving-a-life-pikuach-nefesh/

[91] Deuteronomy 4:9 and 4:15.

[92] Pirkei Avot 1:7.

[93] Deuteronomy 22:8.

wide-ranging precautions to protect lives, including, for instance, fencing in a swimming pool to prevent children from wandering into the area and drowning. Properly vetting persons wishing to enter the country, and keeping out those who cannot be properly vetted, fully comports with these values.

The Proclamation's opponents also often erroneously cite Exodus 22:20 and similar passages forbidding wronging strangers "for you were strangers in the land of Egypt." In fact, the Hebrew word for "stranger" in these passages – "*ger*" – actually refers to a convert to Judaism or a resident alien who accepts seven basic moral laws prohibiting murder, theft, idolatry, incest, etc. Potential terrorists who could murder innocent citizens do not fall within this definition. Instead, they are enemies, prohibited from dwelling in the land. Thus, these passages do not support immigration of terrorist-infiltrated hostile populations.

Strong borders are a Jewish/Judeo-Christian value. Moses blessed the Jewish people before his death with a prayer for strong borders "sealed like iron and copper" to enable the people to live "securely" into healthy "old age."[94] Bringing enemies into one's country is not only unwise; it is prohibited. The Torah also commands: "They [enemies] shall not dwell in your Land,"[95] and explains that God established borders of the world's nations.[96] Poorly vetted or unfettered immigration – an

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[94] Deuteronomy 33:25, 28.

[95] Exodus 23:33.

[96] Deuteronomy 23:8.

essentially borderless world – is not a Judeo-Christian or American value.

CONCLUSION

The Court of Appeals' judgment should be reversed.

Respectfully submitted,

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